## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

UNITED STATES	)
V.	) ) CASE NO. TDC-15CR0003
RICHARD M. MATHISEN	) ) )

## DEFENDANT'S RESPONSE TO THE GOVERNMENT'S MOTION SEEKING INFORMATION FROM PRIOR COUNSEL

Defendant, Richard M. Mathisen, through undersigned counsel, hereby responds to the Government's Motion seeking information from Mr. Mathisen's prior counsel. As grounds for this Response, Mr. Mathisen states as follows:

- 1. On February 2, 2017, Mr. Mathisen filed a Motion with this Court seeking relief under 28 U.S.C. Sec. 2255 ("the 2255 Motion").
- 2. On March 1, 2017, this Court entered an Order directing the Government to file a Response to the 2255 Motion within 60 days from the Court's March 1, 2017 Order.
- 3. On April 17, 2017, less than two weeks before the Government's Response was due to be filed, the Government filed a Motion to Continue the Deadline for filing its Response, based on a change in Government counsel. The Court granted that Motion to Continue, and ordered the Government to file its Response by June 27, 2017.
- 4. The Government filed the instant Motion Seeking Information ("the Government's Motion") on June 13, 2017, once again, just two

weeks before the Government Response was due.

- 5. In a nutshell, the Government seeks an "Informed Consent" or some form of Written Waiver from Mr. Mathisen about his communications with prior counsel relating to the 2255 Motion, issues raised in the 2255 Motion, and the representation subject of the 2255 Motion. This relates to prior counsel's concerns about the attorney-client privilege.
- 6. Undersigned counsel has had discussions with Mr. Mathisen about: (1) the Government's request as set forth in its Motion Seeking Information; (2) the Attorney-Client Privilege and Mr. Mathisen's rights thereunder; and (3) Mr. Mathisen agreeing to and signing an Informed Consent, waiving the Attorney-Client privilege for the purposes of the 2255 Motion and related issues, as generally outlined in *United States v. Butler*, No. DKC-12-0116, 2016 WL 1427090 (D. Md. 2016), in the Government's Motion at pages 3-4.
- 7. Undersigned counsel has sent materials, including the Government's Motion, this Response, and a draft Informed Consent Statement, to Mr. Mathisen at FCI Fort Dix, New Jersey, for his consideration and review.
- 8. Assuming that Mr. Mathisen executes the Informed Consent, upon receipt of the Informed Consent from Mr. Mathisen, undersigned counsel will provide the Informed Consent to prior counsel and the Government, and if directed to, to the Court.

9. Upon service of the Informed Consent on prior counsel and the Government, Mr. Mathisen requests that any Affidavit (and any documents, materials and information) provided by former counsel to the Government must also be produced at the same time to undersigned counsel.

10. Further, given the delays regarding Mr. Mathisen's 2255 Motion reviewed above, the Court should set a specific schedule as follows: upon receipt of Mr. Mathisen's Informed Consent, former counsel shall produce his Affidavit to the Government and undersigned counsel in seven (7) days; upon receipt of former counsel's Affidavit, the Government shall file its Response to the 2255 Motion in 30 days; and Mr. Mathisen's Reply Memorandum shall be filed within 30 days after the filing of the Government's Response.

WHEREFORE, Mr. Mathisen requests that the Court issue an Order consistent with the plan and schedule set forth above.

Respectfully submitted,

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Counsel for Defendant

## CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2017, a copy of this Response was served via ECF on: AUSAS Joseph McFarlane and Lindsay E. Kaplan, United States Attorney's Office, District of Maryland, 6500 Cherrywood Lane, Suite 200, Greenbelt, MD 20770.

\_\_\_\_\_/s/ Peter L. Goldman